

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN J. PERRI	:	CIVIL ACTION
	:	
v.	:	
	:	
CTI DATA SOLUTIONS, (USA), INC.	:	
CTI GROUP (HOLDINGS), INC.	:	
ANTHONY P. JOHNS	:	
MARK DAUGHERTY	:	NO. 97-5116

MEMORANDUM AND ORDER

Fullam, Sr. J. September , 1998

Plaintiff was formerly the chief executive officer and principal shareholder of a company known as Soft-Com. The defendant Anthony P. Johns was and is the CEO and a principal shareholder of the defendant corporations, which are referred to throughout this litigation, as a matter of convenience, as "CTI Group."

Plaintiff's company, Soft-Com, had been successfully marketing a software program developed by Mr. Perri, known as "Unity." The CTI Group was developing a related program known as "Neptune."

In 1996, plaintiff sold his company to the CTI Group, and Soft-Com became a subsidiary of that group. In exchange, plaintiff received shares of stock in the purchaser, a three-year employment contract to be CEO of the renamed subsidiary (salary plus commissions), and a position as one of the directors of the

purchaser.

Plaintiff's employment contract provided that plaintiff would not be required to relocate (he was in New York, where Soft-Com's offices were, and where he resided), and that he could be fired only for certain misconduct specified in the agreement. The agreement also contained strict prohibitions against plaintiff's engaging in any competitive activity.

A few months after the closing, plaintiff was summarily fired. Plaintiff then filed this litigation, charging (1) fraud and misrepresentation (by Mr. Johns) which induced him to sell Soft-Com in the first place; (2) breach of the employment contract; (3) and (derivatively on behalf of CTI Group) various breaches of fiduciary duty and other wrongdoing in connection with the operations of the CTI Group companies. It was plaintiff's contention that, as a result of Mr. John's misdeeds, plaintiff had been deprived of his successful software business, saddled with stock in CTI Group which was worth much less than it had been represented to be worth, deprived of the benefits of his three-year employment contract, and threatened with enforcement of the non-compete clause.

A two-day hearing was held in October 1997, on plaintiff's application for preliminary injunctive relief, at which both sides presented extensive testimony and exhibits. At the conclusion of the testimony, and after hearing counsels'

arguments, I took the matter under advisement; but I commented briefly upon the evidence and the issues, and made it reasonably clear that, in my view, the defendants had breached the terms of plaintiff's employment contract.

The parties then entered upon settlement negotiations, and a comprehensive settlement was agreed upon and submitted to the Court for approval. In accordance with the stipulation of the parties, this Court retained jurisdiction to enforce the terms of the settlement.

In broad outline, defendants agreed to (1) pay plaintiff \$100,000 in installments; (2) pay plaintiff future royalties at specified percentages on sales of the "Unity" program; (3) purchase a significant portion (200,000 shares) of plaintiff's stock in CTI Group for \$80,000 in specified installments; (4) pay off certain debts of Soft-Com which Perri had guaranteed; and (5) utilize Mr. Perri as a distributor of defendants' products. Plaintiff was also to receive options to purchase CTI Group stock at a specified price per share. In exchange, plaintiff agreed that his employment contract was at an end, resigned as a director of CTI Group, and executed a general release.

The terms of the parties' settlement were memorialized in a "Confidential Settlement Agreement," and an attached "Stock-Purchase Agreement," "Distributorship Agreement," etc. In

submitting these documents to this Court for approval of the settlement, the parties also submitted a jointly-executed stipulation which provided that this Court would retain jurisdiction to enforce the settlement.

Plaintiff has now filed motions which charge the defendants with having breached the terms of the settlement. Plaintiff seeks an order enforcing the settlement, and a separate order enjoining certain state court proceedings which have been instituted by Mr. Johns. A hearing on these matters was held on September 15, 1998. Plaintiff's evidence was to the effect that the "settlement payments" specified in the settlement agreement (\$5,000 per month for 20 months) were not being timely made; that the royalty payments were also untimely and, in many instances, not supported by the required documentation; and that the defendants had failed to pay off the Soft-Com debt obligations guaranteed by plaintiff. On the morning of the hearing, however, defendants brought the settlement installments and royalty payments up to date, and asserted that the Soft-Com debts had been paid as of that date (since verified by plaintiff's counsel). I conclude that all of the deficiencies thus far discussed can safely be disregarded. Were it not for some unusual provisions in the settlement documents, plaintiff might well be entitled to interest on the various payments which were concededly made long after they were due. But under the terms of

the relevant documents, interest would begin to run only if, after written notice from the plaintiff, the default was not cured within 30 days. Plaintiff did not formally comply with the notice requirements, and, in any event, the 30-day grace period apparently did not expire in any instance. Thus, no interest is payable.

But plaintiff's principal complaint has not been resolved, and must be addressed. Under the terms of the stock-purchase agreement, the defendants were required to pay plaintiff \$50,000 if, and within 120 days after, the closing of a specified acquisition transaction ("DataBit acquisition") had occurred. The settlement did take place, plaintiff gave the required notices, and, within the 120-day period, Mr. Johns notified plaintiff that he did not intend to make the \$50,000 payment because, he alleged, certain representations made by plaintiff were materially false.

The stock purchase agreement included a representation by plaintiff as follows:

(vi) all invoices generated by CTI Soft-Com, Inc. during seller's tenure as president of CTI Soft-Com, Inc. and as president of Soft-Com, Inc. (which were assumed by the merger) were generated in the normal course of business of CTI Soft-Com, Inc. or Soft-Com, Inc.

This language resulted from extended negotiations. Mr. Johns had originally sought to have plaintiff guarantee that all these invoices were collectible. When that proposal was rejected, he

sought to have plaintiff guarantee that all these invoices were supported by valid and binding contracts. This proposal was also rejected, and the language quoted above was finally approved.

The explanation for plaintiff's insistence upon narrowing the scope of the representation is readily understandable. The company's receivables fell generally into two categories: from sales and installations of computer software programs, and from annual maintenance arrangements ("technical support" agreements). Throughout its history, both before and after it was acquired by the CTI Group, Soft-Com followed the practice - allegedly routine in the industry - of sending its customers annual renewal notices with respect to the maintenance contracts, together with an invoice for the ensuing year. The customer was thereby notified that the contract would automatically be renewed for another year unless the customer returned the invoice with the word "cancel" written thereupon. During plaintiff's tenure with Soft-Com the average annual billings for maintenance contracts aggregated approximately \$250,000, and generated actual revenues of about \$200,000 per year. The shrinkage would be due to cancellations.

Mr. Johns wrote plaintiff a letter stating that he did not intend to make the \$50,000 payment because a large number of invoices were false or invalid. He requested plaintiff to come to his office to discuss these invoices, but at the same time

advised that he would be leaving for England in the near future, on May 17, 1998.

Plaintiff responded to the letter by accusing Mr. Johns of attempting to evade his contractual obligations, but stated he would be glad to review the challenged invoices if Mr. Johns would send him copies for his review, following which he would be glad to discuss the matter further.

The invoices questioned by Mr. Johns were delivered to plaintiff, or his attorney, on May 16, 1998. Mr. Johns left for Europe the next day. On May 28, 1998, while Mr. Johns was still in Europe, his attorney, at his direction, filed suit in the Court of Common Pleas of Montgomery County, Pennsylvania, against plaintiff, seeking a declaratory judgment to the effect that plaintiff had violated the terms of the Stock Purchase Agreement, and that Mr. Johns was not obligated to make the \$50,000 payment. Plaintiff thereupon returned to this court, with (1) a Motion to Enforce the Settlement; (2) a Motion to Enjoin or Stay the Montgomery County Litigation; and (3) a Supplemental Motion for Judgment by Confession on the judgment note which had been given by the corporate defendants to guarantee certain portions of the settlement agreements.

Defendants insist that this Court lacks jurisdiction over the present controversies, and, alternatively, that the plaintiff is not entitled to the relief sought.

## **I. Jurisdictional Issues**

Defendants' jurisdictional challenge is based upon the following line of reasoning: (1) although the parties did stipulate, and this Court agreed, to the retention of jurisdiction by this Court to enforce the settlement, that reserved jurisdiction does not extend to the Stock-Purchase Agreement attached to the Settlement Agreement; and (2) in any event, this Court did not reserve exclusive jurisdiction to enforce the settlement; the Montgomery County Court also has jurisdiction and, since the Montgomery County action was filed before plaintiff's motion in this court, this court should defer to the earlier filed case. Defendants also invoke the Anti-Injunction Act.

I find these arguments totally unpersuasive. In the circumstances of this case, it is clear that the Settlement Agreement and the Stock Purchase Agreement are inextricably intertwined. Throughout both agreements, there are continuous cross-references to the other agreement; the remedies section of the Settlement Agreement deals interchangeably with all of the various agreements which were simultaneously executed. Finally, the Settlement Agreement, in paragraph 21, contains a comprehensive integration clause ("This Agreement, including the exhibits attached hereto, contains the entire agreement of the



parties hereto with respect to the matters covered and the transactions contemplated hereby." ).

I readily agree that, absent the parties' stipulation, disputes arising under any contract between these parties, including the settlement agreement, could have been presented to the Court of Common Pleas of Montgomery County for resolution. Paragraph 25 of the Settlement Agreement provides that the parties "consent to the jurisdiction of the State or Federal Courts of the Commonwealth of Pennsylvania for the limited purpose of resolving 'disputes under the Settlement Agreement.'" ). The Settlement Agreement (and all of the agreements attached) were executed on November 11, 1997. If nothing more had occurred, defendants' jurisdictional argument might have merit. But on November 24, 1997, the parties presented this Court with a stipulation which provided, inter alia:

- "3. The parties have agreed that the Court shall retain jurisdiction for the purposes of enforcing the terms of the Settlement Agreement appended hereto."

On the basis of that stipulation, this Court entered an Order retaining jurisdiction for the purpose of enforcing the settlement. This Court's jurisdiction over controversies concerning the settlement began on November 24, 1997, and continues to date. Defendants' suggestion that the Montgomery County application for declaratory relief pre-dates the

jurisdiction of this Court is patently erroneous.

## **II. The Merits**

The only remaining question is whether the defendants have shown a valid justification for relieving Mr. Johns of his contractual obligation to pay plaintiff \$50,000 for the purchased stock. The only asserted defense to plaintiff's claim in this regard is that plaintiff's representation that all invoices "were generated in the normal course of business" is untrue.

Mr. Johns testified at the recent hearing that he refused to make the \$50,000 payment because his "Chief Financial Officer" had informed him that more than \$100,000 in invoices issued during plaintiff's tenure as CEO were fictitious or otherwise invalid, and had to be written off. The Chief Financial Officer did not testify. No financial records of the company were presented to verify the alleged write-off. And the only evidence produced in support of Mr. Johns' defense is a group of the allegedly invalid invoices. These are the same invoices which are apparently relied upon by Mr. Johns in his state court lawsuit for declaratory judgment of non-liability.

The invoices in question total approximately \$40,000 (not \$100,000). A very significant percentage of these invoices were issued after plaintiff left the company, and thus could not possibly impair the truthfulness of Mr. Perri's representation in

the Stock-Purchase Agreement.

An additional substantial percentage of these invoices cover sales and installations of software programs and/or hardware, and, so far as the record discloses, are perfectly valid and collectible invoices. The remaining invoices, approximately two-thirds of the total, are simply non-renewals of maintenance contracts.

Plaintiff did identify three or four invoices which should not have been sent out, because the maintenance contracts had previously been canceled or non-renewed. The total amounts of these invoices is less than \$2,000 and I readily accept plaintiff's testimony that these erroneous invoices should be attributed to simple clerical error. Indeed, the record leaves open the distinct possibility that no error occurred: the fact that a given customer claimed to have canceled the contract a year or two earlier does not conclusively establish that the company was earlier actually notified of the alleged cancellation.

In short, the difficulty perceived by Mr. Johns is a product of the company's normal course of business (sending renewal invoices subject to later cancellation), rather than a deviation from the normal course of business.

### **III. Conclusion**

The evidence produced at the preliminary injunction hearing in October 1997, coupled with the evidence produced at the recent hearing, gives rise to the distinct impression, which I now formalize as a finding, that the relative trustworthiness of plaintiff and Mr. Johns heavily favors the plaintiff.

An Order follows.

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CTI GROUP (HOLDINGS), INC.	:	
ANTHONY P. JOHNS	:	
MARK DAUGHERTY	:	NO. 97-5116

ORDER

AND NOW, this            day of September, 1998, IT IS  
ORDERED:

1. Plaintiff's Motion to Enforce the Settlement Agreement is GRANTED IN PART. Judgment is entered in favor of the plaintiff John J. Perri, and against the defendant Anthony P. Johns, in the sum of \$50,000 plus interest from June 5, 1998.

2. The defendant Anthony P. Johns is enjoined from proceeding further with the legal action he instituted in the

Court of Common Pleas of Montgomery County, Pennsylvania,  
referred to in the moving papers. Mr. Johns is directed  
forthwith to withdraw that proceeding.

3. Plaintiff's Supplementary Motion for Judgment by  
Confession is DENIED, WITHOUT PREJUDICE.

4. In all other respects, plaintiff's various motions  
are DENIED, WITHOUT PREJUDICE to renewal in the event of further  
violations of the settlement agreements.

5. This Court continues to retain jurisdiction to  
enforce the terms of the parties' settlement.

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John P. Fullam, Sr. J.